

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW MEXICO**

T. ROSARIO ROMAN,

Plaintiff,

v.

20cv00765 WJ/SCY

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER
GRANTING ATTORNEY FEE AWARD

THIS MATTER comes before the Court regarding its recent decision granting Defendant's motion to dismiss in part and awarding Defendant attorneys' fees. *See* Doc. 51. Having reviewed Defendant's submission, the Court finds that Defendant's request for attorneys' fees in the amount of \$3,959.01 is well-taken and reasonable and is therefore granted.

BACKGROUND

In that recent decision, the Court found that Plaintiff's failure to provide adequate information in response to discovery requests was sufficiently culpable to warrant some form of sanctions short of dismissal at this time. Doc. 51 at 12. Plaintiff was ordered to supplement her discovery disclosures and Defendant was awarded attorney fees and costs associated with filing the motion to dismiss and the motion to supplement briefing (Docs. 33 and 45) due to Plaintiff's discovery abuses, with instructions to submit a supporting affidavit for the fees requested. Plaintiff was allowed to file objections to those requests two weeks after Defendant's submission. *Id.* at 13.

On May 19, 2021, defense counsel submitted an affidavit in support of a request for attorneys' fees in the total amount of **\$3,959.01**. (Doc. 54). No objections were filed by Plaintiff.

The Affidavit was submitted by Ms. Jennifer A. Noya, a practicing attorney since 1994 and shareholder with the Modrall Law firm in Albuquerque, New Mexico. Ms. Noya has been in charge of overseeing this case throughout the litigation. Three attorneys (Sonya Burke and Nicole Russell) and one paralegal (LeAnn Gallegos) were involved in preparing the two motions for which defense counsel will be awarded fees. Ms. Burke's hourly rate in this case is \$285.00; Ms. Russell's hourly rate is \$195.00; and Ms. Gallegos's rate is \$110.00 per hour.

DISCUSSION

This Court has discretion to determine the amount of a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The amount awarded by a court is generally based on a "lodestar" amount, which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Hensley*, 461 U.S. at 433; *Ramos v. Lamm*, 713 F.2d 546, 557 (10th Cir. 1983), overruled on other grounds by *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 483 U.S. 711, 725 (1987). The Tenth Circuit has outlined twelve factors, commonly referred to as the *Johnson* factors, for a court to consider when determining the reasonableness of an award of attorneys' fees, as articulated by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).¹ In evaluating the reasonableness of a fee award, a court need specifically address only relevant *Johnson* factors. *Faulkner v. Ensign United States*

¹ The *Johnson* factors are: (1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) any prearranged fee - this is helpful but not determinative; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and the ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Drilling Inc., No. 16-CV-03137-PAB-KLM, 2020 WL 550592, at *3 (D. Colo. Feb. 4, 2020) (citing *Gudenkauf v. Staffer Commc 'ns, Inc.*, 158 F.3d 1074, 1083 (10th Cir. 1998)).

The Court agrees that the hourly rates for Ms. Burke, Ms. Russell and Ms. Gallegos are reasonable and within the range of the prevailing market rates for this community. *See, e.g., New Mexico Turn Around v. City of Albuquerque*, No. 11-cv-00536 (D.N.M. May 22, 2013) (Memorandum Opinion and Order) (approving rates between \$175/hr and \$350/hr); *Spurlock v. Townes*, No. 09-cv-786 (D.N.M. Nov. 21, 2012) (Memorandum Opinion and Order on Plaintiffs' Motion for Attorney Fees) (2012 decision awarding six plaintiff's attorneys hourly rates ranging from \$150 per hour to \$375 per hour); *see also Blum v. Stenson*, 465 U.S. 886, 895 (1984) (court should use "prevailing market rates in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation."); *see also Beard v. Teska*, 31 F. 3d 942, 956- 97 (10th Cir. 1994).

In connection with the two motions Defendant Travelers has incurred the following fees:

Sonya R. Burke	2.1 hours at \$285	\$ 598.50
Nicole T. Russell	15.3 hours at \$195	\$2,983.50
LeAnn Gallegos	.8 hours at \$110	<u>\$ 88.00</u>
Gross receipts tax		\$ 289.01 ²
Total fees plus tax		<u>\$3,959.01</u>

The Court finds that a total award of \$3,959.01 for attorneys' fees is a reasonable lodestar amount for the work involved in filing the two motions relevant here, and that there is no reason to depart from that lodestar amount. Defense counsel's attempts to obtain discovery from Plaintiff spanned a considerable period of time, *see* Doc. 51 at 4-7, and those attempts were clearly documented in the motions.

THEREFORE,

² *Herrera v. First Northern Sav. and Loan Ass'n*, 805 F.2d 896, 902 n.3 (10th Cir. 1986) (noting that some courts have included the gross receipts tax as part of attorney's fee awards with no discussion).

IT IS ORDERED that Defendant is hereby awarded attorney's fees in the total amount of **\$3,959.01**, which includes gross receipts tax, in relation to Defendant's motion to dismiss for discovery violations (Doc. 33) and the Court's Memorandum Opinion and Order awarding attorney fees (Doc. 51).



WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE